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No. 81-2379

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

PHILLIP M. PROCTOR, et al.,

Petitioners,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, et al.,

Respondents.

On Petition For Writ Of Certiorari To
The United States Court Of Appeals
For The District Of Columbia Circuit

BRIEF OF ALLSTATE INSURANCE COMPANY
IN OPPOSITION TO PETITION FOR CERTIORARI

Robert E. Sherman
[illegible]
Chicago, Illinois [illegible]
(312) [illegible]

Counsel of Record for
Allstate Insurance
Company

C. Mark Kingsley
Sonnenschein, Carlin, Nath
& Rosenthal
[illegible]
Chicago, Illinois [illegible]
Of Counsel

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Court of Appeals and the District Court correctly held that the McCarran-Ferguson Act, 15 U.S.C. § 1011-1013(b) (1976), precluded antitrust consideration of an alleged agreement among insurers establishing a "common formula" to be used in meeting their insurance policy obligation when:

   (a) the alleged agreement was limited to entities within the insurance industry; and

   (b) the alleged agreement concerned interpretation of insurance policy contract provisions pertinent to the rate-making process.

2. Whether the Court of Appeals' expression of an additional alternate ground for affirmance—the complete absence of any significant probative evidence to establish any conspiracy as alleged in petitioners' complaint—was procedurally appropriate as an exercise of discretion and legally correct in its application of summary judgment and antitrust principles when:

   (a) the alternative ground had been a focal point of the litigation during its ten-year duration and was exhaustively argued in the briefs filed in both the District Court and the Court of Appeals;

   (b) the Court of Appeals made an independent review of all the record evidence and applied traditional rules resolving all inferences in favor of petitioners; and

   (c) the antitrust principles applied by the Court of Appeals involve no novel question and no departure from well-established precedent.

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v.

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Respondents.

On Petition For Writ Of Certiorari To The United States District Court For The District Of Columbia

BRIEF OF ALLSTATE INSURANCE COMPANY IN OPPOSITION TO PETITION FOR CERTIORARI

Allstate Insurance Company[1] files this brief in opposition to the petition of Phillip M. Proctor, d/b/a Proctor Auto

[1] Allstate's parent corporation is Sears, Roebuck and Co. Allstate's affiliates and subsidiaries (except for its wholly-owned subsidiaries, the wholly-owned subsidiaries of Sears, Roebuck and Co. and the wholly-owned subsidiaries of their subsidiaries and wholly-owned subsidiaries) are Allstate Insurance Company of Canada; Allstate Life Insurance Company of Canada; The Armstrong Rubber Company; Copolymer Rubber and Chemical Corporation; De Soto Inc.; Kellwood Company; Roper Corporation; Sears, Roebuck de Mexico, S.A. de C.V.; Sears, Roebuck de Venezuela, S.A.; Simpson-Sears Limited; Inglis Limited; Simpson-Sears Acceptance Co., Ltd.; Simpson-Sears Properties Ltd.; Kerrybrook Development Ltd.; Regional Shopping Centre Ltd.; and Universal-Rundle Corp. "Affiliates" listed above are those which Allstate included as of

Service, William W. Cumming, Jr., d/b/a Cumming Motors, Inc., Richard T. Hogg, d/b/a Dick Hogg, Inc., and Old Dominion Body Shop, Inc. for a writ of certiorari to review the judgment of the United States Court of Appeals in this case.

The decision below is not in conflict with any holding of this Court or with the decisions of any other circuit. Indeed, it is fully consistent with all decisions which have concerned similar issues.

STATEMENT OF THE CASE

On February 9, 1972, petitioners filed suit in the United States District Court for the District of Columbia alleging that respondents had conspired to fix the price of automobile damage repair work in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1 (1976). Petitioners alleged a horizontal agreement among respondent insurance companies to agree on a common formula to be used in meeting their insurance policy obligation to pay for or repair automobile damage losses. Petitioners further claimed that the acts of various insurance companies allegedly involving vertical arrangements between individual insurers and individual "preferred" repair shops which would perform repair work at the rate sought by the insurer constituted "implementation" of the alleged horizontal agreement.

Petitioners are automobile body repair shops.

Respondents are insurance companies which sell automobile property and physical damage insurance. The record

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December 31, 1981 in Item 2 of the Registration Statement which Allstate is required to file in its domiciliary state to comply with the Insurance Holding Company Systems Act, Ill.Ann.Stat. Ch. 73, § 743.1 et seq. Affiliates whose assets are not greater than one-half (½) of 1% of Allstate's assets are not included in Item 2 of the Registration Statement. An Investment Schedule listing affiliates whose assets are less than one-half of 1% of Allstate's assets is available upon request.

below establishes that each respondent has developed its own claims adjusting techniques and utilizes different methods to determine how much to pay auto body shops for repairing damage to their insureds' automobiles, although in a general sense, all insurers seek to avoid incurring unnecessary or unwarranted expenses. Each respondent denied existence of any agreement as alleged by petitioners and after extensive discovery, sought summary judgment on the grounds that petitioners had no evidence to support their conspiracy claims and that antitrust scrutiny of any such agreement would, in all events, be precluded by the provisions of the McCarran-Ferguson Act, 15 U.S.C. § 1011-1013(b) (1976).

The ten year history of the proceedings below are detailed in the opinion of the Court of Appeals which is the subject of the pending petition. (App. A, pp. 7a-19a.)[2] The sailient facts concerning Allstate Insurance Company are set forth in that opinion (App. A, pp. 46a-52a), in the briefs filed by Allstate in the District Court in support of its initial and renewed motions for summary judgment, and in Allstate's Answers to Interrogatories.

Allstate has evolved its own specialized techniques and procedures for dealing with claims in a manner which Allstate hopes will serve its own competitive purposes—giving maximum customer service at the lowest possible claim cost. Allstate takes the position in dealing with car owners that its contract liability is limited to the price which the most reasonably-priced competitive shops in the area would charge for properly completing all necessary repairs, and attempts to settle automobile material damage claims on this basis. (Allstate's Initial Mem., pp. 18-19; Answer to Interrogatory No. 32.)[3]

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[2] "App. A" refers to Appendix A of the Petition in this case.

[3] "Initial Mem." refers to the Memorandum In Support of Motion of Defendant Allstate Insurance Company for Summary Judgment filed in the District Court on March 28, 1975. "Answer to Interrogatories" cited herein refer to the Answers of Allstate

The competitive rates and charges used in Allstate's estimates are unilaterally determined by Allstate personnel based on market information which is available to them. (Allstate's Initial Mem. pp. 15-17; Answer to Interrogatory No. 14.) Many repair shops quote their prices, rates, and charges to Allstate from time to time, without any solicitation. Also, Allstate adjusters are regularly in a large number of shops in the course of adjusting claims, and they report to their supervisors and managers what rates those shops are currently quoting. (Allstate's Initial Mem., pp. 15-16; Answer to Interrogatory No. 14.) Any change in the rates and charges used in the preparation of the Allstate estimate results solely from an internal business judgment by Allstate. (Allstate's Initial Mem., p. 15; Answer to Interrogatory No. 14.) Allstate's claims adjusting techniques are not only uncontroverted, but petitioners adopted the portions of Allstate's Interrogatory Answers cited above as their own. (See Plaintiffs' Supplemental Answers to Interrogatories Propounded by Allstate p. 3.)

REASONS FOR DENYING THE WRIT

I. THE DECISION BELOW DOES NOT CONFLICT WITH McCARRAN-FERGUSON ACT PRINCIPLES OR PRECEDENTS.

The automobile insurance contract between insurer and insured defines and limits the insurer's liability in cases of automobile damage, specifying that the insurer shall not be called upon to incur expense beyond the reasonable cost of repair or replacement with a product of like kind and quality. The antitrust violation asserted by petitioners is predicated on an alleged agreement, solely between insurance companies, to interpret that contract provision so that the "reasonable cost" will be determined by the insurance company based on hourly labor rates being quoted by competing

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Insurance Company To Plaintiffs Interrogatories, Set No. 1 filed in the District Court on August 16, 1972.

auto body repair shops at the time of repair. The decision below holds that this alleged intra-industry agreement—that contract provisions referencing "reasonable cost" shall be interpreted to mean no more than the price prevailing in the marketplace—is part of the "business of insurance" within the meaning of § 2(b) of the McCarran-Ferguson Act, 15 U.S.C. § 1012(b).

The decision below deals only with agreements within the insurance industry. It does *not* place agreements between insurers and service providers under the McCarran-Ferguson Act exemption, or tamper with this Court's holding in *Group Life & Health Ins. Co.* v. *Royal Drug Co.*, 440 U.S. 205 (1979) that purchasing arrangements with "entities outside the insurance industry" (440 U.S. at 224) are to be subjected to traditional antitrust analysis. On the contrary, the Court of Appeals applied the principles of *Royal Drug* as they were enunciated by this Court. Nor does the decision below create McCarran Act protection for an insurer participating in a provider-level conspiracy involving matters distinct from the insurer-insured contract. The claim here is thus totally unrelated to the issues decided in *Union Labor Life Ins. Co.* v. *Pireno*, 50 U.S.L.W. 4911 (June 28, 1982). *(Cf. Royal Drug, supra,* 440 U.S. at 231-33.) Indeed, the Court of Appeals emphasized the distinction between the agreement alleged here and those which extend outside the industry. (App. A. pp. 26a-27a.) It thus correctly anticipated this Court's decision in *Pireno , supra* which noted that whether the alleged agreement is "limited to entities within the insurance industry" is relevant to application of the McCarron Act. *(Pireno, supra,* 50 U.S.L.W. at 4913.) The decision below also distinguished contract provisions pertinent to rate making from general cost savings arrangements. (App. A, pp. 30a-32a.) Other courts, faced with similar claims have done likewise. *See Quality Auto Body Inc.* v. *Allstate Ins. Co.*, 660 F.2d 1195, 1201 n.4 (7th Cir. 1981), *cert. denied,* 102 S.Ct. 1717 (March 22, 1982); *Workman* v. *State Farm Mutual Auto. Ins. Co.*, 520 F. Supp. 610, 615-16 n.7 (N.D. Cal. 1981); *cf., Chick's Auto Body* v. *State Farm Mutual Auto. Ins. Co.*, 168 N.J. Super. 68, 401 A.2d

722 (N.J. Super. Ct. Law Div. 1979), *aff'd per curiam*, 176 N.J. Super. 320, 423 A.2d 311 (N.J. Super. Ct. App. Div. 1980) (construing a state law provision analogous to the McCarran Act.)

Indeed the intra-industry "agreement" alleged by petitioners merely reflects settled judicial rulings defining the limit of liability with reference to the price charged by the most competitively-priced shops in the area. *See Quality Auto Body, Inc.* v. *Allstate Ins. Co.*, 1980-2 Trade Cases (CCH) ¶ 63,507 at p. 76,693 n.2 (N.D. Ill.), *aff'd*, 660 F.2d 1195 (7 Cir. 1981), *cert. denied*, 102 S.Ct. 1717 (March 22, 1982); *Smith* v. *Farm Bureau Ins. Co.*, 98 N.H. 420, 101 A.2d 778, 780-81 (N.H. 1953); *Gambale* v. *Allstate Ins. Co.*, 209 Pa. Super. 330, 228 A.2d 58, 60 (Pa. Super Ct. 1967); *Holmes* v. *Motors Ins. Corp.*, 277 So. 2d 472, 473-74 (La. Ct. App. 1973); *DeBonoventura* v. *Nationwide Mutual Ins. Co.*, 419 A.2d 942, 951 (Del. Ch. 1980), *aff'd*, 428 A.2d 1151 (Del. 1981). *See also, Davis* v. *Lewis*, 487 S.W. 2d 411, 414-15 (Tex. Civ. App. 1972); *Top Service Body Shop, Inc.* v. *Allstate Ins. Co.*, 283 Or. 201, 582 P.2d 1365, 1376-77 (Or. 1978). Insurance regulatory provisions are to the same effect.[4]

The intra-industry, insurance contract-interpreting agreement alleged here has been repeatedly cited by the Department of Justice as one of the paradigmatic cases of McCarran-Ferguson Act application. For example, the

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[4] *See e.g.*, December 10, 1970 Statement of the Colorado Insurance Commissioner to the Independent Garage Owners of Metropolitan Denver: "... a claimant ... cannot expect to receive a greater settlement than is necessary to accomplish the repairs at the most reasonably priced competent repair shop ..." (Hogg Dep. Exhibit 22B p. 2); Cumming Dep. Ex. 21D (referring to a statement of a Pennsylvania Insurance Department representative that insurance companies could limit payment to the lowest price at which a qualified repair shop in the area was willing to make the repair).

amicus brief for the United States in this Court in *Royal Drug*, specifically analyzed the alleged *Proctor* agreement:

> "We agree with the Court's conclusion in [Proctor] about the horizontal agreements among the insurance companies. They are wholly intra-insurance industry agreements concerning the extent to which particular claims would be paid. *The formula for the payment of insurance claims is an integral part of any contract of insurance, because it determines how much risk is involved, and how much of the risk will be assumed by the insurer.* Such agreements among insurers are no different in substance from agreements on the premiums to be charged, and the McCarran-Ferguson Act's chief purpose was to leave such matters exclusively to State regulation. (Brief at 31; footnote omitted, emphasis added.)
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> The appropriate principles, in our view, may be summarized as follows: If two or more insurance companies agree on the premiums or on the benefits to be paid for a given insured loss, such agreements are part of the "business of insurance" and are ordinarily immune from antitrust scrutiny (if they are regulated by State law)." (Brief at 32.)

Again, in *Pireno*, the amicus brief for the United States pointed out that *Pireno* did not involve alleged "intra-industry horizontal activity". (Brief for the United States, p. 19 n.17.) And as noted in the decision below, the District Court's 1980 *Proctor* decision has been cited with approval in an Antitrust Division amicus brief filed in a factually similar case.[5]

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[5] The Memorandum of the United States as Amicus Curiae in *D & B Auto Body, Inc.* v. *Allstate Ins. Co.*, No. 79-0550 (D.R.I.), filed by respondents in the Court of Appeals and relied upon in the decision below (App. A, p. 27a-28a, n.27) states the position clearly:

> "We assume that any such alleged [horizontal] agreement would center on the decision to limit benefits payable to the

Petitioners' assertion that the decision below holds that all horizontal insurance industry conspiracies are immune from antitrust scrutiny misstates and misrepresents the Court of Appeals' opinion. Insofar as the McCarran-Ferguson Act is concerned, the decision below is limited to the mainstream of McCarran Act principles and precedents: an alleged agreement in which all alleged parties to the agreement are within the regulated insurance industry, factually distinguishable from general cost-savings arrangements with service providers, and dealing with the interpretation of a contract obligation between insurer and insured pertinent to the rate-making process.

No novel or unsettled question of law is presented by that ruling.

II. THE COURT OF APPEALS' INCLUSION OF AN ADDITIONAL ALTERNATE GROUND FOR AFFIRMANCE WAS PROCEDURALLY AND SUBSTANTIVELY CORRECT.

After ten years of litigation, in which the parties had extensively briefed, argued, rebriefed and reargued the summary judgment ground challenging petitioners' claim of an antitrust conspiracy, the Court of Appeals determined to express itself fully on the issues before it by addressing an additional ground for affirming the District Court which had been argued by the parties, *viz.*, the absence of any significant probative evidence to support petitioners' conspiracy claims.

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competitive rate or on the system of setting such a rate and negotiation with repair shops....

As we have noted, setting the level of benefits due the policyholder under the insurance contract constitutes the "business of insurance." An agreement among insurers to provide reimbursement only for the competitive or prevailing cost of repair would, therefore, be immune from the anti-trust laws if regulated by State law. See Proctor [District Court decision on remand]." (Memorandum at 20-21.)

Stated otherwise, the Court of Appeals recognized that, whatever the merits and potential complexities of the McCarran Act issue in other settings, in the specific circumstances of this litigation, it was inappropriate to continue to focus judicial resources on an abstract analysis of the McCarran Act dispute (assuming that there was a conspiracy to be exempted from scrutiny) when, in law and in fact, no claim of conspiracy could be sustained. This aspect of the decision below does not involve any novel or significant question which warrants review by this Court. On the contrary, it is well settled that the approach followed by the Court of Appeals was an appropriate exercise of discretion; applicable summary judgment standards were strictly applied by the Court of Appeals; and the antitrust principles enunciated in the decision below are fully supported by precedent.

A. Expression Of An Alternate Ground For Affirmance Was Within The Discretion Of The Court Of Appeals.

The alternate ground for summary judgment included in the decision below had been a significant aspect of this litigation during the ten years it had been pending and, as the decision below noted, both sides "made this issue a major part of their presentation both to the District Court and to this court on appeal." (App. A, p. 36a.) The Court of Appeals conducted "an independent review" of "all of the record evidence" (*Id.* at pp. 35a n.37, 39a) and applied the traditional summary judgment standard, viewing the record and any inferences to be drawn from it in the light most favorable to petitioners. (*Id.* at pp. 18a-19a, 35a n.37.) In particular, the Court of Appeals concluded that petitioners "have had a fair opportunity to contest, and have in fact contested" the conspiracy issue. (*Id.* at p. 37a.)

The right of the Court of Appeals to exercise its discretion in this manner is well settled. As this Court noted in *Singleton* v. *Wulff*, 428 U.S. 106, 120-21 (1976) (citations omitted):

> "The matter of what questions may be taken up and resolved for the first time on appeal is one left primarily

> to the discretion of the Courts of Appeals, to be exercised on the facts of individual cases. We announce no general rule. Certainly, there are circumstances in which a federal appellate court is justified in resolving an issue not passed on below, as where the proper resolution is beyond any doubt, or where 'injustice' might otherwise result. . . ."

This Court also noted that the examples cited in its opinion "are not intended to be exclusive" (428 U.S. at 121 n.8) and that the key factor is whether petitioner had a fair opportunity to offer evidence and to contest the new issues reached by the Court of Appeals. (428 U.S. at 120-21.)

Under the circumstances detailed in the decision below, the right of the Court of Appeals to consider and rule on an alternative issue cannot be seriously questioned. *See, e.g., Picture Music, Inc.* v. *Bourne, Inc.*, 457 F.2d 1213, 1215 n.5 (2d Cir.), *cert. denied*, 409 U.S. 997 (1972); *Rich* v. *U.S. Lines, Inc.*, 596 F.2d 541, 551 (3rd Cir. 1979); *Yale* v. *National Indem. Co.*, 602 F.2d 642, 645 (4th Cir. 1979); *Miller* v. *Gateway Transp. Co.*, 616 F.2d 272, 275 n.7 (7th Cir. 1980); *Chambers* v. *Omaha Public School Dist.*, 536 F.2d 222, 227 (8th Cir. 1976); *Helena Rubenstein, Inc.* v. *Bau*, 433 F.2d 1021, 1024 (9th Cir. 1970); *United States* v. *General Motors Corp.*, 518 F.2d 420, 440-41 (D.C. Cir. 1975); *Winter* v. *Local Union No. 639*, 569 F.2d 146, 151 (D.C. Cir. 1977).

B. The Fact That Summary Judgment Was Granted In An Antitrust Conspiracy Case Cannot Be Seriously Advanced As A Basis For Supreme Court Review.

Petitioners' assertion that the grant of summary judgment in an antitrust case conflicts with decisions of this Court is remarkable, to say the least.

The Court of Appeals' decision does not depart in any respect from the legal standards applicable to summary judgment. On the contrary, the decision below applies the plain language of Fed. R. Civ. P. 56 (e), and this Court's

decision in *First National Bank* v. *Cities Service Co.*, 391 U.S. 253, 289-90 (1968):

> "To the extent that petitioner's . . . argument can be interpreted to suggest that Rule 56(e) should, in effect, be read out of antitrust cases and permit plaintiffs to get to a jury on the basis of the allegations in their complaints, coupled with the hope that something can be developed at trial in the way of evidence to support those allegations, we decline to accept it. While we recognize the importance of preserving litigants' rights to a trial on their claims, we are not prepared to extend those rights to the point of requiring that anyone who files an antitrust complaint setting forth a valid cause of action be entitled to a full-dress trial notwithstanding the absence of any significant probative evidence tending to support the complaint."

The propriety of summary judgment in antitrust cases has been recognized repeatedly. *See, e.g., Quality Auto Body* v. *Allstate Ins. Co.*, 660 F.2d 1195, 1201 (7th Cir. 1981), *cert. denied*, 102 S.Ct. 1717 (March 22, 1982); *Merit Motors, Inc.* v. *Chrysler Corporation*, 569 F.2d 666, 669 (D.C. Cir. 1977); *Weil* v. *Continental Illinois National Bank & Trust Co.*, 641 F.2d 457, 464 (7th Cir. 1981) *cert. denied*, 102 S.Ct. 1610 (March 1, 1982); *Modern Home Institute Inc.* v. *Hartford Accident and Indem. Co.*, 513 F.2d 102, 109-110 (2d Cir. 1975); *Scranton Construction Co.* v. *Litton Industries Leasing Corp.*, 494 F.2d 778, 782 (5th Cir. 1974), *cert. denied*, 419 U.S. 1105 (1975); *Chapman* v. *Rudd Paint and Varnish Co.*, 409 F.2d 635, 643-44 (9th Cir. 1969); *Lupia* v. *Stella D'oro Biscuit Co.*, 586 F.2d 1163, 1166 (7th Cir. 1978), *cert. denied*, 440 U.S. 982, (1979); *Lamb's Patio Theatre, Inc.* v. *Universal Film Exchanges, Inc.*, 582 F.2d 1068, 1070-71 (7th Cir. 1978); *Harold Friedman, Inc.* v. *Kroger Co.*, 581 F.2d 1068, 1080 (3rd Cir. 1978); *Mutual Fund Investors, Inc.* v. *Putnam Management Co.*, 553 F.2d 620, 624-25 (9th Cir. 1977); *James R. Snyder Co.* v. *Edward Rose & Sons, Inc.*, 546 F.2d 206, 210 (6th Cir. 1976); *Willmar Poultry Co.* v. *Morton-Norwich Products, Inc.*, 520 F.2d 289, 293 (8th Cir. 1975), *cert. denied*,

424 U.S. 915 (1976) (partial summary judgment); *Sausalito Pharmacy, Inc.* v. *Blue Shield,* 1981-1 Trade Cases, (CCH) ¶ 63,885, at 75,610-11 (N.D. Cal. 1980), *aff'd,* 677 F.2d 47 (9th Cir. 1982); *Zenith Radio Corporation* v. *Matsushita Electric Industrial Co. Ltd.,* 513 F.Supp. 1100, 1140-42 (E.D. Pa. 1981).

Moreover, the record here reflects petitioners' total failure to meet the facts established by the party moving for summary judgment and their total failure to satisfy the "significant probative evidence" standard. Petitioners wholly failed to respond to specific facts negating conspiracy presented by respondents.[6] And, of course, assertions which are not based on logical inferences do not establish any triable issue of fact. *Cf., Fiumara* v. *Texaco, Inc.,* 204 F.Supp. 544, 548 (E.D. Pa. 1962), *aff'd,* 310 F.2d 737 (3rd Cir. 1962); *Ayers* v. *Pastime Amusement Co.,* 283 F.Supp. 773, 792-93 (D.S.C. 1968). As the decision below demonstrates, petitioners' opposition to summary judgment rested on arguments not supported by cited "authority", inferences urged in the face of evidence plainly

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[6] For example, against petitioners' pleading claim that respondents agreed in 1967 to establish "drive-in" claim centers as part of the alleged conspiracy, Allstate submitted the affidavit of W. C. Rhoads establishing that Allstate had unilaterally established such centers in 1952 (some 15 years before). Against petitioner's pleading claim that Allstate had refused to negotiate with body shops as part of the alleged conspiracy, Allstate cited deposition testimony of its employees, other auto body repair shop owners and petitioners themselves. Against petitioners' pleading claim of agreement among companies Allstate detailed the deposition testimony and documents demonstrating that decisions had been made by Allstate internally without communication from any other insurer on the subject. *See generally,* Initial Mem. pp. 9-38, Reply Memorandum In Support of the Motion of Defendant Allstate Insurance Company for Summary Judgment, pp. 4-11 (filed in the District Court on July 31, 1975), Defendant Allstate Insurance Company's Reply to Plaintiffs' Memorandum In Opposition to Allstate's Renewed Motions for Summary Judgment, pp. 3-17 (filed in the District Court on June 26, 1980).

Petitioners did not contradict those well-established facts.

indicating the opposite, and repeated gross misstatements of the record. (App. A, pp. 39a-54a.) No triable issue of fact is established by such assertions.

C. The Decision Below Applies Settled Antitrust Precedents.

The decision below analyzes two fundamental defects in petitioners' legal analysis: (1) the assertion that a horizontal conspiracy may be inferred from conduct (*e.g.*, surveying the market and seeking competitive prices) which is admittedly consistent with individual pursuit of independent economic self-interest (App. A, pp. 37a-39a, 53a-54a) and (2) the claim that some form of antitrust illegality attends the business relationship between individual insurance companies and individual auto body repair shops. (App. A., pp. 59a-63a.)

In both cases the Court of Appeals correctly concluded that petitioners' claims were erroneous as a matter of law. Conduct which is entirely consistent with individual self-interest and independent decision-making has never been accepted as significant probative evidence sufficient to support an inference of conspiracy. *First National Bank* v. *Cities Service Co.*, 391 U.S. 253, 279-80 (1968); *Theatre Enterprises, Inc.* v. *Paramount Film Distributing Corp.*, 346 U.S. 537, 541-42 (1954); *Federal Prescriptions Service, Inc.* v. *American Pharmaceutical Assoc.*, 663 F.2d 253, 267-68 (D.C. Cir. 1981), *cert. denied*, 102 S. Ct. 1293 (Jan. 25, 1982); *Weit* v. *Continental Illinois Nat'l. Bank & Trust*, 641 F.2d 457, 462-63 (7th Cir., 1980) *cert. denied*, 102 S.Ct. 1610 (March 1, 1982); *Independent Iron Works, Inc.* v. *U.S. Steel Corp.*, 322 F.2d 656, 661-62 (9th Cir.) *cert. denied*, 375 U.S. 922 (1963); *Admiral Theatre Corp.* v. *Douglas Theatre Co.*, 585 F.2d 877, 884 (8th Cir. 1978); *Bogosian* v. *Gulf Oil Corp.*, 561 F.2d 434, 446 (3rd Cir. 1977), *cert. denied*, 434 U.S. 1086 (1978). And the conduct of individual insurers seeking to obtain the benefits of price competition from service providers (described by petitioners as a vertical restraint suggesting the implementation of a horizontal conspiracy) has been uniformly sanctioned as the very "essence of competition." *Quality Auto Body, Inc.* v. *Allstate Ins. Co.*,

660 F.2d 1195, 1204-05 (7th Cir. 1981) *cert. denied*, 102 S.Ct. 1717 (March 22, 1982); *Workman* v. *State Farm Mut. Auto. Ins. Co.*, 520 F.Supp. 610, 624-25 (N.D. Cal. 1981); *Chick's Auto Body* v. *State Farm Mut. Auto. Ins. Co.*, 168 N.J. Super. 68, 401 A.2d 722, 730-31 (N.J. Super. Ct. Law Div. 1979), *aff'd per curiam*, 176 N.J. Super. 320, 423 A.2d 311 (N.J. Super. Ct. App. Div. 1980); *Debonoventura* v. *Nationwide Ins. Co.*, 419 A.2d 942, 950-51 (Del. Ch. 1980), *aff'd* 428 A.2d 1151 (Del. Super. Ct. 1981).

Plainly, the claim that the Court of Appeals departed from settled antitrust principles is without merit.

CONCLUSION

For all of the foregoing reasons, petitioner's application for a writ of certiorari should be denied.

Respectfully submitted,

ALAN H. SILBERMAN
8000 Sears Tower
Chicago, Illinois 60606
(312) 876-8000

Counsel of Record for
Respondent Allstate
Insurance Company

Of Counsel:
C. MARK KINGSEED
SONNENSCHEIN CARLIN NATH
& ROSENTHAL
8000 Sears Tower
Chicago, Illinois 60606

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